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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/849,674   | 05/07/2001  | Mark W. Ferry        |                     | 8941             |
| 27034  | 7590        | 06/24/2004           | EXAMINER            |                  |
| NEAL O. WILLMANN<br>9521 MONTGOMERY ROAD<br>CINCINNATI, OH 45242 |             |                      | DONNELLY, JEROME W  |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3764                |                  |
| DATE MAILED: 06/24/2004  |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|------------------------------|------------------------|---------------------|
|                              | 09/849,674             | FERRY, MARK W.      |
| Examiner                     | Art Unit               |                     |
| Jerome W Donnelly            | 3764                   |                     |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 4/19/2004

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) \_\_\_\_\_ is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 7 is/are allowed. *1,2,3,5 and 6*

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) 4 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Jerome W. Donnelly  
Primary Examiner**

Jerome W. Donnell,  
Primary Examiner

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

Claim 7 is allowed.

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes.

Forbes discloses a bag member which comprises an enclosure having a bottom a removable top curving lateral sides enclosing as broadly claimed foam material (3) which considered by the examiner as padding material, which in turn can an does insulate bottles of various sizes (see col. 4, lines 44-60).

In regard to claim 5 note strap 20.

In regard to claim 3 poly-vinyl is considered as being a sub-product of polyethylene.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes in view of Skinner et al.

The examiner notes that it would have been obvious to one of ordinary skill in the art to manufacture the single strap of Forbes as a plurality straps in view of the plurality of straps of Skinner et al, or to include an additional strap for the purpose of providing a carrying handle to the device of Forbes.

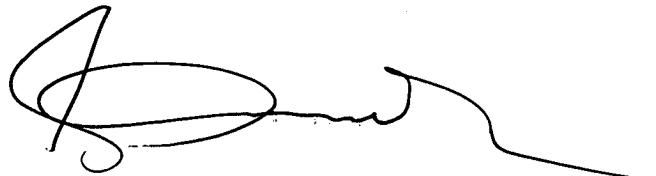
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the use of bottle members in the art of exercising (See Belekin et al, Roth, Passer and Kelley et al.

Note the overall structure of the device of Fields et al.

Any inquiry concerning this communication should be directed to Jerome W Donnelly at telephone number 308-2668.

Donnelly/DI

June 1, 2004



Jerome W. Donnelly  
Primary Examiner